In the High Court of Judicature at Madras

Dated: 05/03/2003

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The Hon'ble Mr.Justice P.D.DINAKARAN

Criminal Appeal No.490 of 1996 and Criminal Appeal No. 248 of 1997

Crl.A.No.490 of 1996

M.Ramachandran .. Appellant

-Vs-

The State rep. by
Deputy Superintendent of Police,
Vigilance and Anti Corruption
Department, Salem. .. Respondent

Crl.A.No.248 of 1997

State by Deputy Superintendent
of Police, Vigilance and Anti
Corruption, Salem, rep. By the
Public Prosecutor, High Court
Madras. .. Appellant

Vs

S.Senkottaiyan .. Respondent

Prayer:- Appeals are directed against the judgment of conviction and sentence dated 12.6.1996 in S.C.C.No.118 of 1990 passed by the learned Special Judge-cum-I Additional District Judge and Chief Judicial Magistrate, Salem.

!For Appellant : Mr.S.Ashok Kumar in
Crl.A.490/1996 for Mr.T. Susindran

^For Respondent : Mr.V.Kathiravan
in Crl.A.248/1997 for Mr.M.Ravi

For Appellant : Mr.V.M.Rajendran
in Crl.A.248/1997 Addl. Public Prosecutor
and for respondent and
in Crl.A.490/1996 Mr.K.V.Jeyprakash
Narayanan,
Govt. Advocate (Crl Side)

:JUDGMENT

Heard.

2.1. These appeals are directed against the judgment dated 12.6.199 6 made in S.C.C.No.118 of 1990 of the learned Special Judge-cum-I Additional District Judge and Chief Judicial Magistrate, Salem, convicting the first accused who was facing trial for the offences punishable under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the 'Act') and sentencing him with rigorous imprisonment for one year with a fine of Rs.500/-, in default to undergo rigorous imprisonment for one month, for the offence punishable under Section 7 of the Act, and with rigorous imprisonment for one year with a fine of Rs.500/-, in default to undergo rigorous imprisonment for one month, for the offence punishable under

Section 13(2) r/w 13(1)(d) of the Act; and acquitting the second accused, who was facing trial for the offences punishable under Sections 7 r/w 12 and 13(2) r/w 13(1)(d) of the Act.

2.2. Assailing the judgment of conviction dated 12.6.1996, the first accused has preferred Crl.A.No.490 of 1996, and challenging the judgment of acquittal of the second accused, the State has preferred Crl.A.No.248 of 1997.

2.3. Since both the appeals arise from the same judgment dated 12.6.1996 made in S.C.C.No.118 of 1990 of the learned Special Judge-cum-I Additional District Judge and Chief Judicial Magistrate, Salem, they were heard and disposed of together.

2.4. For the purpose of convenience, the parties are arrayed as per their rank before the trial Court. Accordingly, the appellant in Crl.A.No.490 of 1996 is referred to as the first accused, respondent in Crl.A.No.248 of 1997 is referred to as the second accused, and the respondent in Crl.A.No.490 of 1996 and the appellant in Crl.A.No.248 of 1997 is referred to as the complainant.

3. In a nutshell, the first accused was working as a Taluk SubInspector of Survey, in Namakkal Taluk and the second accused was working as a Firka Surveyor in the Namakkal Taluk during the relevant period, namely during October to December, 1989, and therefore, both the accused are public servants. The first accused was charged for the offences punishable under Sections 7 and 13(2) r/w 13(1)(d) of the Act and the second accused was charged for the offences punishable under Sections 7 r/w 12 and 13(2) r/w 13(1)(d) of the Act, with reference to an alleged occurrence of having demanded and accepted bribe of Rs.50 0/- from one Thiru.C.Loganathan (P.W.1) as gratification other than legal remuneration for processing the application dated 11.10.1989 (Ex.P1) of P.W.1 and that of his uncle Thiru.Kandaswamy (P.W.3) for sub-dividing their lands and issuing separate pattas.

4. Either the demand or acceptance of gratification other than the legal remuneration as a motive or reward in the exercise of an official duty by a public servant amounts to an offence and criminal misconduct punishable

under the provisions of the Act. Whether the first and second accused are liable to be punished for such offences is the core question to be answered in these appeals.

5.1. In brief, the case of the prosecution as unfolded by P.W.1 is that P.W.1 and P.W.3, placing reliance on the decree and judgment dated 31.7.1973 in O.S.Nos.792, 592 and 707 of 1972 of the learned District Munsif, Namakkal (Ex.P4), and the decree and judgment dated 24.2.1 989 in R.E.P.No.81 of 1987 in O.S.No.503 of 1986 (Ex.P5) respectively, and other supporting documentary evidence such as Chitta Book (Ex. P3), and sale deed dated 31.8.1989 (Ex.P6), by their applications even dated 11.10.1989 (Exs.P1 and P19 respectively), after paying necessary fee under challan dated 7.10.1989 (Ex.P2), applied for survey and revenue sub-division of their lands and for issuance of separate pattas.

5.2. On the basis of the said application (Ex.P1), the second accused visited the village in November, 1989 and surveyed the lands of P. W.1 and also required P.W.1's uncle P.W.3 to pay separate fees for resurvey and for grant of separate patta for his lands. Accordingly, P.W.3 paid a sum of Rs.12/- under challan dated 12.12.1989 (Ex.P7). After ten days, i.e., on 22.12.1989, at about 1.00 p.m. P.Ws.1 and 3 went to the Taluk office and enquired the second accused about the separate pattas, and the second accused informed them that he had already submitted his report and asked P.Ws.1 and 3 to meet first accused for further progress in the matter.

5.3. P.Ws.1 and 3 met the first accused on the same day, namely on 2 2.12.1989, and requested him to do the needful for getting their pattas. The first accused told P.Ws.1 and 3 that he had already received the report, but wanted Rs.500/- as bribe to do the needful in the matter. When P.W.1 explained his inability to pay the amount, it was made clear that nothing could be done without obliging the said demand. The first accused also wanted P.W.1 to come with the amount at 11.00 a.m. on 26.12.1989, so that he would complete the entire formalities within five or six days thereafter.

5.4. As P.W.1 was not willing to pay any bribe, he approached the office of the Deputy Superintendent of Police, Vigilance and Anti Corruption Department, Salem with Rs.500/- (M.Os.1 to 3 series) at about 7 .30 a.m. on 26.12.1989 and lodged a complaint (Ex.P8) narrating the demand of bribe by the first accused. Based on the said complaint, the Deputy Superintendent of Police, Vigilance and Anti Corruption Department, Salem (P.W.10) registered a F.I.R. on 26.12.1989.

5.5. After registering the F.I.R. the investigating officer (P.W.10) prepared two trap witnesses, namely (i) M.Jayapal (P.W.2), who was working in the Electricity Board, Sornapur, and (ii) Palanisamy, who was working in the Agricultural Department, and introduced them to P. Ws.1 and 3. Both the trap witnesses were also permitted to read the complaint (Ex.P8) filed by P.W.1. Thereafter, P.W.10 made preparations for trapping. P.W.10, received Rs.500/- from P.W.1 as per the following denominations (M.Os.1 to 3 series) bearing numbers, as detailed hereunder:

i.Rupees Hundred Currency - 4 Nos.
a) 4FT 297690 b) 8CT 774792
c) 7KV 761593 d) 8GU 780817

ii.Rupees Twenty Currency - 3 Nos.

a) 51V 638287 b) 14B 895982
c) 42F 823598

iii.Rupees Ten Currency - 4 Nos.

a) 32T 735902 b) 49H 149687
c) 09G 381964 d) 44G 541252

Thereafter, P.W.10 showed the currencies (M.Os.1 to 3 series) to the trap witnesses. P.W.10 took one glass of water, added chemical powder (Sodium Carbonate powder) and asked the trap witnesses to immerse their fingers into the solution, and required them to observe that there was no change in the colour of the solution. Then, P.W.10 dusted phenolphthalein powder on the currencies, required the trap witnesses to count the currencies and immerse their fingers in the Sodium Carbonate Solution, and it was observed that the solution turned into purple-red colour. The solution was put into a separate bottle with a mark "S1" (M.O.4). The balance of phenolphthalein powder after dusting the currencies of Rs.500/- was kept in a separate bag marked as " A" (M.O.5), and the balance of Sodium Carbonate after preparing the solution was kept in a separate bag marked as "B" (M.O.6). Thus, P.W.10 explained the procedure of conducting the trap and handed over the amount of Rs.500/- dusted with phenolphthalein powder to P.W.1 and required him to meet the first accused and pay him if demanded and to give signal to the trap squad immediately. Thereafter, P.W.1 and the trap witness P.W.2 went to the office of the first accused, as recorded under the mahazar marked as Ex.P10, duly signed by P.W.1, P.W.2 and Palanisamy (trap witness).

5.6. As directed by PW10, PW1 and PW2 reached the Namakkal Taluk Office at about 11.15 a.m. on 26.12.1989, went to Survey Section, met the first accused and asked him to send the file to the Tahsildar to get orders for issuance of separate pattas. Immediately, the first accused enquired whether PW1 brought Rs.500/- as demanded. After confirming that PW1 had brought Rs.500/-, the first accused told that he had not received the reports from the second accused with respect to resurvey and issuance of separate pattas for the lands of PW3 and therefore, required P.Ws.1 and 2 to meet him after the arrival of the second accused. At about 1.30 p.m. on 26.12.1989, the first accused went for lunch and asked PW1 and PW2 to wait for the second accused, who would come shortly and therefore, PW1 and PW2 sat in the verandah. The first accused returned to section at 2.15 pm and the second accused came to the office at 3 p.m. As required by the first accused, P.Ws.1 and 2 took the second accused to the first accused. The second accused informed that he had already submitted the report relating to resurvey and sub-division of lands of P.W.3 on 22.12.1989 itself, and they were in order.

Thereafter, the first accused asked the second accused to accept Rs.500/- that would be given by PW1, and required PW1 to hand over Rs.500/- to the second accused. Hence, PW1, the trap witness (PW2) and second accused came out of the office and PW1 took Rs.500/- from his pocket and gave it to the second accused, as demanded by the first accused, in the presence of PW2. After counting the said amount, the second accused kept the same in his pant pocket, in the presence of PW1 and PW2. In no time, at 3.20 pm, on a signal given by PW1, the trap squad reached the second accused. Then the trap squad led by P.W.10 went to the Survey Section along with the second accused, P.W.1 and P.W.2, where identified by P.W.1, the first accused was enquired about the demand of bribe. P.W.10, thereafter, took two glasses of water and added Sodium Carbonate powder and asked second accused to immerse both the hands and observed that the solution turned purple-red; poured the solution in two bottles; and marked the solution in which second accused immersed his right hand as "S2" (M.O.7) and left hand as "S3" (M.O.8) and kept the same under seal. During the enquiry the second accused admitted that he accepted the amount of Rs.500/-, from P.W.1 and kept the same in his left side pant pocket, and produced the same. The numbers of the said currencies tallied with the numbers mentioned in the mahazar (Ex.P10). The amount of Rs.500/- was seized as M.Os.1 to 3 series under Mahazar Ex.P16. The second accused was given one set of dress and the left side pocket of the pant, which he was wearing at the time of accepting bribe from PW1, was immersed in the solution and observed that it turned purplered; and the said solution was poured in a bottle and marked as "S4" (M.O.9), the pant which second accused was wearing was marked as M.O.1 0. Then, P.W.10 arrested the first accused and second accused.

6.1. Pursuant to the said trap conducted on 26.12.1989, the Investigating Officer (P.W.10) collected further evidence from P.Ws.4, 5, 6 and 7, who are working in the Revenue Department as Senior Draftsman, Junior Assistant, Deputy Inspector of Survey, and the Village Administrative Officer respectively, and got a sanction from the Assistant Director of Survey & Land Records (P.W.9), the sanctioning authority under Section 19 of the Act, for prosecuting the first and second accused, and laid charge sheets against the first and second accused as follows:

Charges against the first accused:
1. That the first accused being a public servant while employed as Deputy Surveyor, Namakkal Taluk on 26.12.1989 at about 3.20 p.m. at the Taluk Office, Namakkal agreed to accept from one Loganathan a sum of Rs.500/- through second accused for the first accused as gratification other than legal remuneration as a motive or reward in the exercise of your official duty as Deputy Surveyor for processing and to do the needful on the application given by Loganathan and his Uncle on 11 .10.1989 for subdividing their lands and to give separate pattas and that the first accused thereby committed an offence punishable under Section 7 of the Act.

2. Additionally, that the first accused on 26.12.1989 at about 3.20 p.m. at the Taluk Office, Namakkal obtained from one Loganathan a sum of Rs.500/- through second accused by criminal misconduct as gratification other than legal remuneration (pecuniary advantage) as a motive or reward in the exercise

of the first accused's official duty as Deputy Surveyor for processing and to do the needful on the application given by Loganathan and his uncle on 11.10.1989 for subdividing their lands and to give separate pattas and that the first accused thereby committed an offence punishable under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act.

Charges against the second accused:
1. That the second accused on or about the same time and place and in the course of the same transaction as mentioned in Charge No.1 of the first accused, abetted first accused in the commission of the offence of taking gratification other than legal remuneration in respect of an official act being a public servant, by receiving the amount of Rs.500/- from the said Loganathan on the instructions of first accused and such act of first accused was committed in consequence of abetment and the second accused thereby committed an offence punishable under Section 7 read with Section 12 of the Prevention of Corruption Act.

2. Additionally, that the second accused about the same time and place and in the course of the same transaction as mentioned above, abetted first accused in the commission of the offence of taking gratification other than legal remuneration (pecuniary advantage) in respect of an official act being a public servant, by obtaining the amount of Rs.500/- from the said Loganathan on the instructions of first accused and such act of first accused was committed in consequence of abetment and the second accused thereby committed an offence punishable under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act.

6.2. Since both the accused denied the charges, they were tried for the said charges in S.C.C.No.118 of 1990 by the learned Special Judge-cum-I Additional District Judge and Chief Judicial Magistrate, Salem.

7.1. To substantiate the above charges, the prosecution examined 10 witnesses, of whom P.Ws.1 and 3 are the aggrieved parties who lodged the complaint before the Deputy Superintendent of Police, Vigilance and Anti Corruption Department, Salem. P.W.2 is the trap witness. P. Ws.5 and 6 are the witnesses from the Revenue Department, who spoke about the demand on 22.12.1989 and 26.12.1989 and the acceptance of the same by the first and second accused. P.W.7 is the Village Administrative Officer of Rasipalayam Village, who deposed that even though the first accused visited Rasipalayam Village on 22.12.1989, he left Rasipalayam Village at 11.30 a.m. itself to Namakkal, to corroborate the case of the prosecution that the first accused was present in the office at about 1.00 p.m. on 22.12.1989. P.W.9 is the sanctioning authority under Section 19 of the Act, who gave sanction for prosecuting the first and second accused.

7.2. That apart, 35 documents were marked as Exs.P1 to P35, on behalf of the prosecution, of them the following are relevant to be referred to:
Ex.P1
the application given by P.W.1 for resurvey and issuance of separate patta for his lands

Ex.P2
challan for the payment of Rs.6/- for sub division

Ex.P3
copy of the chitta

Ex.P7
the challan for the payment of Rs.12/-

Ex.P8
complaint given by PW1 to the Deputy Superintendent of Police, Vigilance & Anti Corruption Department, Salem

Ex.P9
acknowledgment for the receipt of a copy of the FIR

Ex.P10
mahazar prepared in the Office of P.W.10 for recovery of M.Os.1 to 6

Ex.P11
file relating to application of PW1 seized from PW4

Ex.P14
Office note with regard to application of PW3 for resurvey and issuance of separate patta for his lands

Ex.P15
attendance register of the first accused

Ex.P16
mahazar prepared in the Taluk Office for recovery of the amount of Rs.500/-

Ex.P17
6(II) Register seized in Taluk Office with respect to the attendance of the first accused

Ex.P18
map prepared at the place of occurrence

Ex.P19
application given by PW3 for separate patta

Ex.P20
note with regard to the application of PW1 made in Ex.P17

Ex.P21
note with regard to the application of PW3 made in Ex.P17

Ex.P22

list of sub division petitions from 1.10.1989 to 31.10.1989

Ex.P23
list of petitions from 1.11.1989 to 30.11.1989

Ex.P24
report sent by second accused with regard to the application of PW1

Ex.P25
report sent by second accused with regard to the application of PW3

Ex.P26
order of Sub Division Tahsildar with regard to the application of PW1

Ex.P27
order of Sub Division Tahsildar with regard to the application of PW3

Ex.P28
Fortnightly diary of the first accused

Ex.P29
report of the first accused for inspecting Rasipalayam Village

Ex.P30
fortnightly diary of the second accused for December 1989

Ex.P31
requisition for chemical examination of M.O.4 to M.O.10

Ex.P32
letter of the Court for sending M.O.4 to M.O.10 for chemical examination

Ex.P33
analysis report

Ex.P34
sanction order by PW9 to initiate prosecution against the first and second accused

Ex.P35
FIR prepared by PW10

8.1. Even though, P.W.1 categorically deposed that the first accused demanded illegal gratification from him to discharge public duty with respect to the applications of P.Ws.1 and 3 for resurveying their lands and issuing separate patta, in his cross-examination, P.W.1 deposed that he, however, never made any complaint against the second accused, and that the second

accused did not demand any money from P.W.1 on 26.12.1989; nor the second accused accepted the money for himself.

8.2. Similarly, P.W.3 - Kandasamy, who is nonetheless the uncle of P.W.1, deposed that the first accused demanded money for resurveying the land and issuing separate patta, and stated that the second accused never rejected his application.

8.3. PW4 - Srinivasan, who was working as a Senior Draftsman at Namakkal from 15.9.1989, deposed that the first accused was working in the taluk office after 1.00 p.m. on 22.12.1989 and at that time, two persons from Karadipatti village came and were talking with the first accused, and that the first accused was working in the office on 26.12.1989 also. P.W.4 further deposed with reference to the attendance register (Ex.P15), that the first accused was on inspection duty at Rasipalayam village on 22.12.1989, and as per daily register (Ex.P30) the second accused was working in the office on 22.12.1989.

8.4. PW5 - Kamaraj, who was working as a Junior Assistant, Despatch Section in the Taluk office during the year 1989 deposed that on 26.1 2.1989, he saw the officers from Vigilance and Anti Corruption Department, at the taluk office between 3.00 and 3.15 p.m. conducting an enquiry with the first accused with respect to the files (Ex.P12) relating to the lands owned by P.W.3. As per Ex.P12, the second accused forwarded his report on 22.12.1989 itself with respect to the resurvey, sub-division of lands and issuance of separate pattas.

8.5. PW6 - Ramalingam, who was working as Deputy Inspector of Survey, in Survey section at Namakkal Taluk Office in the year 1989 deposed that the first accused was working in the office at about 1.00 p.m. on 22.12.1989.

8.6. P.W.7 - Kandasamy, who was working as a Village Administrative Officer of Rasipalayam Village in Namakkal deposed that the first accused came to Rasipalayam Village at about 10 a.m. on 22.12.1989, to measure the ten acres of lands of one Natesan and after completing the measurement work he left Rasipalayam at 11.30 a.m. for Namakkal.

8.7. P.W.9 - Bakthavatsalam was the Assistant Director of Survey & Land Records, who accorded sanction for prosecuting the first and second accused as contemplated under Section 19 of the Act.

8.8. P.W.10 - Krishnasamy is the investigating officer who conducted the trap against the first and second accused after following the procedures contemplated, strictly in accordance with law. He, graphically, narrated about the trap conducted by him on the first and second accused, viz., (i) identifying independent trap witness, a Government servant (P.W.2); (ii) explaining P.W.2 about the complaint made by P.Ws.1 and 3 against the public servants, viz., the first and second accused, with respect to the demand of illegal gratification; (iii) explaining the procedure relating to the trap as narrated in detail above; (iv) the events taken place immediately after the receipt of illegal gratification by the second accused and the procedure

followed thereafter, as explained above; (v) with respect to the evidence collected from P.Ws.4, 5, 6 and 7, who are working in the Revenue Department, to prove that the first accused demanded illegal gratification from P.W.1 at about 1.00 p.m. on 22.12.1989 and again on 26.12.1989; (vi) obtaining sanction from P.W.9 for prosecuting the first and second accused, as contemplated under Section 19 of the Act; and (vii) with respect to the forwarding of material objects for chemical analysis and receipt of the analysis report (Ex.P33).

9. While questioning under Section 313 Cr.P.C., the first and second accused denied charges framed against them and pleaded not guilty.

10.1. It was contended on behalf of the first accused that he never demanded bribe as he was not present in the office on 22.12.1989, but was "on duty" at Rasipalayam Village for inspection and measurement of ten acres of land of one Natesan, even as per Ex.P15, attendance register, which corroborates with the evidence of the Village Administrative Officer (P.W.7), and therefore, the acceptance of bribe by the second accused, assuming is proved, would not, by itself, be sufficient to convict the first accused for the offence charged.

10.2. On behalf of the second accused it was contended that the second accused never demanded any gratification from P.Ws.1 and 3, at any point of time, either on 22.12.1989 or 26.12.1989, even as per the evidence of P.Ws.1 and 3. On the other hand, as per the evidence of P.W.4, he had already forwarded the report of resurvey and subdivision of lands (Ex.P12) to the first accused as early as on 22.12.1989 and therefore, there is no necessity for him either to demand or accept any money on 26.12.1989 during the trap. Hence, assuming the evidence of P.Ws.1, 2, 3 and 10 are accepted, it would not be safe to convict the second accused merely for having accepted bribe as instructed by the first accused.

11. The learned Special Judge-cum-I Additional District Judge and Chief Judicial Magistrate, Salem, by judgment dated 12.6.1996 in S.C.C.No.118 of 1990 accepted the defence of the second accused and acquitted him; but rejected the defence of the first accused, and convicted the first accused for the offence punishable under Sections 7 and 13 (1)(d) r/w 13(2) of the Act and sentenced him with rigorous imprisonment for one year with a fine of Rs.500/-, in default to undergo rigorous imprisonment for one month, for the offence punishable under Section 7 of the Act, and with rigorous imprisonment for one year with a fine of Rs.500/-, in default to undergo rigorous imprisonment for one month, for the offence punishable under Section 13(2) r/w 13(1)(d) of the Act. Hence, the above appeals.

12. Mr. Ashok Kumar, learned counsel appearing for the first accused inviting my attention in detail to the evidence on record, contends that

(i)as per the attendance register (Ex.P15), first accused was "on duty" at Rasipalayam Village on 22.12.1989, to survey ten acres of lands of one Natesan which would take minimum of three hours and therefore, the very basis of the complaint that the first accused was present in the taluk office on 22.12.1989

and demanded bribe from PW1 and PW3 on 22.12.1989 is liable to be rejected;
(ii)the documentary evidence, viz. the attendance register (Ex.P15) which shows that the first accused was "on duty" at Rasipalayam village, would be a strong and irrebuttable evidence and would prevail over the oral evidence of P.Ws.1 and 3. Consequently, the allegation mentioned in the complaint (Ex.P8) with respect to the demand of bribe by the first accused on 22.12.1989 fails;
(iii)placing reliance on the decision in C.K.DAMODAR NAIR Vs. GOVERNMENT OF INDIA reported in 1997 Crl.L.J. 739 = 1997 SCC (Cri) 654, that the demand or request from the official concerned is a primary requisite for the offence under Section 5(1)(d) of the Prevention of Corruption Act, 1947 (identical to Section 13(1)(d) of Prevention of Corruption Act, 1988) contends that in view of the authenticated proof, based on Ex.P15 that the first accused was not present in the office on 22.12.1989, the very complaint (Ex.P8) and the allegation that the first accused demanded or requested bribe from PW1 and PW3 on 22.12.19 89 in the Taluk office are liable to be rejected. It would not, therefore, be safe to convict the first accused for the offence under Sections 7 and 13(2) r/w 13(1)(d) of the Act for want of proof for prerequisite condition, viz. demand or request of bribe by the first accused;
(iv)relying on ratio laid down in SUBASH PARBAT SONVANE Vs. STATE OF GUJARAT reported in 2002 SCC (Cri) 954, that in the absence of evidence by panch witnesses as to the demand of any amount from the complainant, the prosecution version of the demand and acceptance of the amount by the accused is liable to be rejected, it is contended that there was no specific demand of bribe by the first accused on 26.12.198 9 between 11.15 am to 3.20 pm, as PW1 and PW2 deposed that the first accused merely required P.Ws.1 and 2 to wait till the arrival of the second accused. As the trap witness (PW2) never stated that the first accused had demanded bribe from PW1 on 26.12.1989, the conviction of the first accused for the offence under Sections 7 and 13(2) r/w 1 3(1)(d) of the Act is liable to be set aside;
(v)as there is no independent evidence, except the evidence of PW1 and PW3 that the first accused had demanded bribe from them and hence, the conviction of the first accused is not sustainable in view of the ratio laid down in AYYASAMI Vs. STATE OF TAMIL NADU reported in 199 2 SCC (Cri) 182; and
(vi)in any event, once the appellant has proved with documentary evidence (Ex.P15) that he was on duty to survey ten acres of lands of one Natesan at Rasipalayam village on 22.12.1989, which is supported with the testimony of Village Administrative Officer (PW7) and other witnesses, viz. PW4 and PW6, it is for the prosecution to prove that the first accused demanded bribe on 22.12.1989; and that the first accused is not required to prove his defence by strict standard of proof beyond reasonable doubt, as required by the prosecution to prove the charges in a criminal trial. Since the first accused satisfactorily proved that it would not be probable for him to be present in the office on 22.12.1989 as per Ex.P15, which corroborates with the evidence of Village Administrative Officer (P.W.7), it would not be safe to convict the first accused for the offence under Sections 7 and 13(2) r/w 13(1)(d) of the Act. In this regard, reliance is placed on the decision in R.K.DEY Vs. STATE OF ORISSA reported in AIR 1977 SC 170 and MAN SINGH Vs. DELHI ADMN. reported in AIR 1979 SC 1455.

13. Mr.Kathiravan, learned counsel for second accused, inviting my attention to the evidence of PW1, PW2 and PW3 and Exs.P8 and P12, contends

that

(i)the second accused never demanded any illegal gratification from PW1 and PW3 and there was no allegation against the second accused whatsoever in Ex.P8 with respect to such demand of bribe;
(ii)the second accused was not present either at 1 pm on 22.12.1989 when the first accused demanded bride from PW1 and PW3 in the Taluk Office; nor on 26.12.1989 when the first accused asked PW1 and PW2 to wait in the verandah for the arrival of the second accused to hand over Rs.500/- to him. As evident from Ex.P12, second accused had already forwarded the report of re-survey and sub division of the lands of PW1 and PW3 as early as 22.12.1989 itself and therefore, there was no necessity either to demand or accept bribe of Rs.500/- for discharging any official duty, which had already been discharged by him; and
(iii)the second accused never accepted bribe from PW1 and PW2, but it was only thrust in his pocket by PW1 and in any event, assuming the evidence of PW1, PW2 and PW10 are accepted, the second accused could not be found guilty of the charge for the offences punishable under Section 7 r/w 12 and 13(2) r/w 13(1)(d) of the Act, as he neither demanded bribe nor accepted the same on his own behalf and hence, no interference is required in the acquittal of the second accused.

14.1. Per contra, Mr.V.M.Rajendran, learned Additional Public Prosecutor, answering to the submissions made by Mr.Ashok Kumar, learned counsel for first accused submits that

i.even though the first accused was said to be on duty at Rasipalayam village to survey ten acres of lands of one Natesan, as per Ex.P15, the Village Administrative Officer (PW7) categorically deposed that the first accused left Rasipalayam village at 11.30 a.m. on 22.12.1989 itself to Namakkal, immediately after surveying the sub divisions only, as the first accused and PW7 did not survey the entire ten acres of lands of Natesan on 22.12.1989;
ii.P.W.4 deposed that he had seen the first accused talking to two persons of Karidipatti Village at about 1.00 p.m. on 22.12.1989, and the suggestion that the first accused was present at Rasipalayam Village throughout the day on 22.12.1989 was specifically denied by P.W.4 in his cross-examination; and
iii. P.W.6 specifically deposed that P.W.1 came to the Taluk office on 22.12.1989 and met the first accused, and on the other hand, the suggestion that the first accused was not present on the afternoon of 22.12.1989 was denied by P.W.6 in his cross-examination.

14.2. Mr.V.M.Rajendran, learned Additional Public Prosecutor arguing against the acquittal of the second accused further contends that

(i)acceptance of bribe by the second accused on 26.12.1989, as spoken by PW1, PW2 and PW10 need not be for an official duty to be discharged thereafter, but it could be also for the official duty already discharged by him and therefore, even though there was no complaint either by PW1 or PW3 in Ex.P8 that the second accused demanded bribe from PW1 and PW3 either on 22.12.1989 or 26.12.1989, the evidence of PW1 , PW2 and PW10 with respect to the trap of the second accused for having accepted Rs.500/- (M.O.1 to M.O.3 series) as

bribe, could not be brushed out totally from the clutches of the offence punishable under Section 7 r/w 12 and 13(2) r/w 13(1)(d) of the Act; (ii)placing reliance on C.K. DAMODAR case, referred supra, and NAVANEETHAKRISHNAN Vs. STATE reported in 2002 MLJ (Crl.) 46, contends that once the recovery of currencies from the possession of the second accused stands proved by the evidence of PW1, PW2 and PW10, the contention of the learned counsel for the second accused that such amount was never received by the second accused on his own behalf, but it was only thrust in his pocket by PW1 does not deserve any consideration; nor the contention that assuming it was accepted by the second accused, it was only done either at the direction of or on behalf of first accused, also cannot be accepted; and (iii)placing reliance on M.NARASINGA RAO Vs. STATE OF A.P. reported in 2001 SCC (Cri) 258, it is contended that the acceptance of the gratification was proved by substantial evidence of PW1, PW2 and PW10 read with M.O.1 to M.O.3 series and therefore, it has to be presumed that such gratification was accepted as reward for doing a public duty and hence the acquittal of the second accused is totally unjustified, contrary to law and therefore, requires interference of this Court.

15. I have bestowed my careful consideration to the submissions of both sides.

16. The points that arise for my consideration are:
i.Whether the conviction of the first accused for the offences punishable under Sections 7 and 13(2) r/w 13(1)(d) of the Act based on the evidence of P.Ws.1, 2, 3 and 10 in the light of the corroborative evidence of P.Ws.4, 6 and 7 and other supporting documentary evidence, namely Exs.P1, P2, P7, P8, P10, P16, P17, P19, P31 and P33, and the material objects M.Os.1 to 3 series is sustainable in law?
ii.Whether the acquittal of the second accused of the offences punishable under Sections 7 r/w 12 and 13(2) r/w 13(1)(d) of the Act is justified?

17.1. The practice of giving and demanding bribe is a social evil having deleterious effect on the entire civilized society and has to be condemned by the strong hands of judiciary. Misuse of power while discharging their public duty by demanding or/and accepting bribe by the public servant, therefore, implies doing of something illegal and improper. The essence of such illegality and impropriety is replacement of a public motive for a private one. When satisfaction sought in the performance of public duties is for mutual personal gain, the misuse is usually termed as corruption.

17.2. Corruption, Corruption, Corruption in everything and everywhere is the hue and cry of the general public at the length and breadth of this greatest democratic nation. Corruption has penetrated into the grassroots of the society and has grown as a baniyan tree in all branches of the public administration. Bribery and corruption having been uncontrolled and rampant, and the need for weeding them out having been felt, the Prevention of Corruption Act, 1988 was enacted.

17.3. Even though the onus to prove the guilt of the accused beyond any shadow of doubt is on the prosecution, as per Section 20 of the Act, the

burden of proof is shifted on the accused when it is shown that the accused has accepted or obtained or agreed to accept or obtain gratification other than legal remuneration as a motive or reward. It is a trite law that once the prosecution proves acceptance of money by the accused, the presumption to be drawn is that the tainted money is the bribe money, and then it will be for the accused to explain or controvert the essential elements in the prosecution case, even though it is not for the accused at the initial stage to prove something which has to be eliminated by the prosecution to establish the ingredients of the offence.

18. The prosecution, in the instant case, in order to prove their case relied upon the evidence of the following four categories of witnesses:
(i) the evidence of P.Ws.1 and 3, who lodged the complaint before the Deputy Superintendent of Police, Vigilance & Anti Corruption Department, Salem, with respect to the demand and acceptance of gratification;
(ii) the evidence of P.W.2, who is the trap witness with the supporting documentary evidence, viz., Exs.P1, P2, P7, P8, P9, P10, P16, P19, P31, P32 and P33;
(iii) the evidence of P.W.10, who is the Investigating Officer; and
(iv) the corroborative evidence of P.Ws.4, 5, 6, 7 and 8, with supporting documents, viz., Exs.P1, P2, P7, P8, P9, P10, P16, P19, P31, P32 , P33 and P35.

19.1. In the instant case, Mr.Ashok Kumar, learned counsel appearing for the first accused and Mr.Kathiravan, learned counsel appearing for the second accused are not challenging the procedure adopted by the Investigating Officer (P.W.10) in conducting the trap nor questioned the sanction obtained before prosecuting the first and second accused as contemplated under Section 19 of the Act.

19.2. Both the learned counsel for the accused argued that while the prosecution witnesses said that the second accused demanded money (a sum of Rs.500/-) (M.Os.1 to 3 series) from P.W.1, as required by the first accused, accepted the same when offered by P.W.1, counted the same and kept them in his pant pocket, the second accused in his defence claimed that the amount was thrust into his pocket.

19.3. The Apex Court in C.K.DAMODARAN NAIR case, referred supra, held that once the recovery of marked currency notes from the possession of the accused is not disputed, the defence plea that the amount was thrust into the pocket of the accused is liable to be rejected in view of the irrebuttable presumption in law as per Section 20 of the Act. Since acceptance of the gratification was thus proved by the evidence of P.W.1 which corroborates with the evidence of trap witness (P.W.2) and that of the Investigating Officer (P.W.10), it should be presumed that the accused had accepted the said amount as reward for doing public duty attracting Section 7 of the Act, unless the contrary is proved, as held by the Apex Court in M.NARASINGA RAO Vs. STATE OF A.P. reported in 2001 SCC (Cri) 258.

19.4. The bone of contention of Mr.Ashok Kumar, of course, is that the very allegation of P.Ws.1 and 3 as mentioned in the complaint (Ex.P8) that

the first accused demanded a sum of Rs.500/- at about 1.00 p.m. on 22.12.1989 for discharging his public duty, namely resurvey, sub-division, and issuance of separate pattas for the lands belonging to P.Ws.1 and 3, pursuant to their application (Ex.P1) on payment of necessary fees under challans marked as Exs.P2 and P7, is untrue. In this regard, Mr.Ashok Kumar relies upon Ex.P15, the attendance register of the first accused, as per which the first accused was "on duty" at Rasipalayam Village on 22.12.1989 and therefore, he was not at all in the office at 1.00 p.m. on 22.12.1989. To substantiate his contention, Mr.Ashok Kumar also invited my attention to the evidence of the Village Administrative Officer (P.W.7), who had stated that the first accused visited Rasipalayam Village for inspecting and surveying ten acres of lands of one Natesan, which would take a minimum of three hours to complete.

19.5. It is true, as held by the Apex Court in R.K.DEY Vs. STATE OF ORISSA reported in AIR 1977 SC 170 and MAN SINGH Vs. DELHI ADMN. reported in AIR 1979 SC 1455, that the accused is not required to prove his defence by strict standard of proof of reasonable doubt; but it is sufficient if he offers an explanation or defence which is probable and discharges his burden of proving preponderance of probabilities of his claim that he was not at all in the office at 1.00 p.m.on 22.1 2.1989. Once this is done, the presumption under Section 4 of the Prevention of Corruption Act, 1947 now Section 20 of the Prevention of Corruption Act, 1988 stands rebutted, and hence, it is only for the prosecution to prove affirmatively in what manner the offence had been committed.

19.6. But, I am unable to appreciate the said argument of Mr.Ashok Kumar in view of the material evidence available in hand. The prosecution, does not dispute the fact that as per the attendance register (Ex.P15), the first accused went to Rasipalayam Village for inspection and to conduct survey of ten acres of land of one Natesan. But, the Village Administrative Officer (P.W.7) in his evidence even though supported the stand of the first accused that he had been at Rasipayalam Village on 22.12.1989 morning, as rightly pointed out by the learned Additional Public Prosecutor, the Village Administrative Officer (P.W.7) in clear terms had stated that the first accused left Rasipayalam Village at 11.30 a.m. itself to Namakkal as they surveyed only the sub-divisions on 22.12.1989 morning, but not the entire land of an extent of 10 acres of Natesan. That apart, in support of the evidence of P.Ws.1 and 3 that the first accused was present at about 1.00 p.m. on 22.12.1989 in the Survey Section of the Taluk Office, he asked Rs.500/- within four or five days for doing the needful on their application (Ex.P1), and also required them to meet at about 11.00 a.m. on 26.12.1989 with the money, the Senior Draftsman (P.W.4) in his cross-examination specifically deposed that the first accused was available at 1.00 p.m. on 22.12.1989 and he was discussing with two persons from Karadipatti Village. P.W.4 specifically denied the suggestion that the first accused was at Rasipalayam throughout the day on 22.1 2.1989, even though as per the records he was "on duty" at Rasipalayam on 22.12.1989. Moreover, the Deputy Inspector of Survey (P.W.6) also corroborated that the first accused was present at the Taluk office at 1.00 p.m. on 22.12.1989. Therefore, even though the accused had discharged his initial burden of creating a reasonable doubt as to his presence at 1.00 p.m. on 22.12.1989, by offering his explanation based on attendance register

(Ex.P15), which is, of course, probable, the prosecution, in my considered opinion, had proved affirmatively the presence of the first accused on 22.12.1989 in the office at 1.00 p.m. Hence, the presence of the first accused at 1.00 p.m. on 22.12.1989 and the demand of bribe from P.W.1, as deposed by P.Ws.1 and 3 which corroborates with the evidence P.Ws.4 and 6 further strengthens the case of the prosecution. Therefore, the contention of Mr.Ashok Kumar that the prosecution has not proved the prerequisite that the first accused demanded bribe from P.W.1 is not proved, is not tenable and the reliance placed on the decision in C.K.DAMODARAN case, referred supra, also would not, in any way, improve the defence of the first accused.

20.1. The second limb of argument was that even on 26.12.1989, the first accused did not demand any gratification from P.W.1. Of course, placing reliance on the decisions of the Apex Court in (i) AYYASAMI Vs. STATE OF TAMIL NADU reported in 1992 SCC (Cri) 182, and (ii) SUBASH PARBAT SONVANE Vs. STATE OF GUJARAT reported in 2002 SCC (Cri) 954 , Mr.Ashok Kumar, contends that in the absence of an independent witness to show that the first accused demanded money, it would not be safe either to hold that the money was accepted by the second accused only at the instance and on behalf of the first accused or to convict the first accused merely based on the recovery of money from the second accused during the trap.

20.2. In this regard, I am obliged to scrutinize the evidence of P. Ws.1, 2 and 10 scrupulously.

20.3. P.W.1, in his cross-examination, in clear terms confirmed that as required by the first accused he went along with P.W.2 with tainted money of Rs.500/- (M.Os.1 to 3 series) at 1.00 p.m. on 26.12.1989 to meet the first accused. The first accused confirmed with P.W.1 whether he brought Rs.500/- as demanded. Then, the first accused informed P.W.1 that he has not received the report from the second accused with respect to his Uncles' (P.W.3) land and therefore, required P. Ws.1 and 2 to wait for the second accused and to meet him. Accordingly, P.Ws.1 and 2 waited for the second accused at the verandah of the Taluk Office. When the first accused went out for his lunch at about 1.30 p.m., he saw P.Ws.1 and 2 waiting for the second accused at the verandah and asked them to wait for the second accused and said that the second accused would be coming shortly. The first accused returned at 2.15 p.m. after lunch. After the second accused came to office at about 3.00 p.m., P.Ws.1 and 2 met the second accused and took him to the first accused. When the first accused asked about the report of resurvey and sub-division of lands for issue of separate pattas, the second accused replied that he had already submitted his report (Ex.P12) on 22.12.1989 itself in the Taluk Office. The first accused, thereafter, asked P.Ws.1 and 2 to handov er Rs.500/- to the second accused outside the office and asked the second accused to accept the same. Accordingly, P.Ws.1, 2 and the second accused went outside the office, near Mohanoor Road entrance, where the second accused asked Rs.500/- from P.W.1, as required by the first accused, and P.W.1. gave Rs.500/- (M.Os.1 to 3 series) to the second accused and the second accused after counting the same kept it in his pant pocket. In no time, on signal,

P.W.10 reached the second accused and proceeded with the trap formalities and found the chemical solution turned into purple-red colour on immersion of the fingers of the second accused, as also deposed by P.Ws.2 and 10 in this regard.

20.4. Even while cross-examining, the trap witness (P.W.2) specifically confirmed that in his presence the first accused demanded whether P.W.1 brought money. Corroborating with the said evidence of P.Ws.1 and 2 in this regard, P.W.4 deposed that P.Ws.1 and 2 were talking with the first accused at about 3.00 p.m. in the taluk office just prior to the trap. That apart, there is absolutely no allegation against P.Ws.1 and 3 complaining any motive on their part to implicate the accused in the above complaint; nor any motive against the trap witness (P.W.2) for deposing the evidence against against the accused. Hence, the factum of demand both on an earlier date, namely at 1.00 p.m. on 22.12.1989 and also on 26.12.1989 in the presence of trap witness (P.W.2), which is prior to the trap stands proved and concluded. I am, therefore, unable to accept the contention of Mr.Ashok Kumar, that the demand of bribe by the first accused as deposed by P.Ws.1 and 3, on 22.12.1989, and as deposed by P.Ws.1 and 2, on 26.12.1989, cannot be accepted without an independent witness. In any event, it is a trite law that the rule of corroboration is one of prudence and need for corroboration of testimony of trap witnesses is not a universal rule, vide SOM PRAKASH Vs. STATE OF DELHI reported in AIR 1974 SC 989 . The above graphical evidence of PW1, PW2 and PW10 shows that there was a clear demand of bribe by the first accused and acceptance of bribe by second accused on behalf of first accused. Hence, in view of the above unimpeachable evidence of P.Ws.1, 2, 3 and 10, I have no hesitation to hold that the prosecution has clearly established that the first accused in discharge of his official duty made a demand of Rs.500/- from P.W.1 as an illegal gratification.

20.5. Of course, Mr.Kathiravan, learned counsel for the second accused, placing reliance on the evidence of P.Ws.1, 2 and 3, contends that the second accused never demanded money and also submits that the second accused had already prepared his report (Ex.P12) as early as on 22.12.1989 and forwarded the same to the first accused. But, the evidence of P.Ws.1 and 2 clearly shows that after going outside the taluk office, near Mohanoor road entrance, it was the second accused who demanded money from P.W.1, even though the same was initially originated from the first accused, which amounts to negotiation for demand as well as acceptance of bribe, which, in my considered opinion, certainly attracts Sections 7 r/w 12 and 13(2) r/w 13(1)(d) of the Act. Hence, the charge against the second accused also stands substantially proved by the prosecution.

21. In the result,

(i) Crl.A.No.490 of 1996 is dismissed and the judgment of conviction and sentence dated 12.6.1996 in S.C.C.No.118 of 1990 passed by the learned Special Judge-cum-I Additional District Judge and Chief Judicial Magistrate, Salem is confirmed with regard to the first accused; and

(ii) Crl.A.No.248 of 1997 is allowed, the judgment of acquittal dated

12.6.1996 in S.C.C.No.118 of 1990 passed by the learned Special Judge-cum-I Additional District Judge and Chief Judicial Magistrate, Salem, acquitting the second accused is set aside and the second accused is convicted for the offences punishable under Sections 7 r/w 12 and 13(2) r/w 13(1)(d) of the Act.

22. However, before imposing punishment, the appellant in Crl.A.No.2 48 and 1997 is directed to produce the second accused before this Court at 10.30 a.m. on 6.3.2003 for questioning with respect to the sentence to be imposed. Accordingly, the matter is adjourned to 6.3.2003 .

kpl/sasi

05-03-2003

1. Pursuant to the directions of this Court dated 5.3.2003, the complainant (appellant in Crl.A.No.248 of 1997) produced the second accused (respondent in Crl.A.No.248 of 1997) before this Court for questioning him with respect to the sentence to be imposed for the offences he was convicted, which are punishable under Sections 7 r/w 12 and 13 (2) r/w 13(1)(d) of the Act.

2. A public servant who is convicted for the offence punishable under Section 7 r/w 12 of the Act shall be punished with imprisonment which shall not be less than six months, but which may extend to five years and shall also be liable to a fine as per Section 7 of the Act.

3. Similarly, a public servant who is convicted for the offence punishable under Section 13(2) r/w 13(1)(d) of the Act shall be punished with imprisonment which shall not be less than one year, but which may extend to seven years and shall also be liable to a fine as per Section 13(2) of the Act.

4. The second accused (respondent in Crl.A.No.248 of 1997), while questioning as to the proposed punishment, in the light of the above provisions, seeks the indulgence of this Court to award a minimum punishment for the following reasons:
(i) he is 53 years old;
(ii) he has one daughter aged 23 years and two sons aged 24 years and 20 years, who are all unmarried and unemployed; and
(iii) his wife is a diabetic and requires constant medical treatment.

5. Taking into consideration the above submission of the second accused and the fact that the first accused (appellant in Crl.A.No.490 of 1996), at whose instance the second accused (respondent in Crl.A.No.248 of 1997) is said to have demanded and accepted bribe in question was sentenced with rigorous imprisonment for one year with a fine of Rs.500/-, in default to undergo rigorous impr isonment for one month, for the offence punishable under Section 7 of the Act; and sentenced with rigorous imprisonment for one year with a fine of Rs.500/-, in default to undergo rigorous imprisonment for one month, for the offence punishable under Section 13(2) r/w 13(1)(d) of the Act, and in order to meet the ends of justice, the second accused (respondent in

Crl.A.No.248 of 1997) is sentenced for a period of six months for the offence punishable under Section 7 r/w 12 of the Act with a fine of Rs.200/-, in default to undergo rigorous imprisonment for a period of one month; and is sentenced for a period of one year for the offence punishable under Section

13(2) r/w 13(1)(d) of the Act with a fine of Rs.300/-, in default to undergo rigorous imprisonment for a period of one month. The sentences imposed above shall run concurrently.

Accordingly, Crl.A.No.490 of 1996 is dismissed and Crl.A.No.248 of 1997 is allowed.

6.3.2003
Index :Yes
Internet:Yes
kpl/sasi

To:
1. The Special Judge-cum-I Additional
District Judge and Chief Judicial
Magistrate, Salem.

2. The Public Prosecutor
High Court, Madras.